

## **EXHIBIT “1”**



County: **01** Case Number: **CV-2021-903644.00** Court Action:  
 Style: **ONIN STAFFING, LLC V. PHILADELPHIA INDEMNITY INSURANCE COMPANY**

Real Time

## Case

### Case Information

County:	01-JEFFERSON - BIRMINGHAM	Case Number:	CV-2021-903644.00	Judge:	BBG:BRENDETTE BROWN GREEN
Style:	ONIN STAFFING, LLC V. PHILADELPHIA INDEMNITY INSURANCE COMPANY				
Filed:	12/14/2021	Case Status:	ACTIVE	Case Type:	CONTRACT/EJMTN/SEIZU
Trial Type:	JURY	Track:		Appellate Case:	0
No of Plaintiffs:	1	No of Defendants:	1		

### Damages

Damage Amt:	0.00	Punitive Damages:	0.00	General Damages:	0.00
No Damages:		Compensatory Damages:	0.00		
Pay To:		Payment Frequency:		Cost Paid By:	

### Court Action

Court Action Code:		Court Action Desc:		Court Action Date:	
Num of Trial days:	0	Num of Liens:	0	Judgment For:	
Disposition Date of Appeal:		Disposition Judge:	:	Disposition Type:	
Revised Judgement Date:		Minstral:		Appeal Date:	
Date Trial Began but No Verdict (TBNV1):					
Date Trial Began but No Verdict (TBNV2):					

### Comments

Comment 1:  
 Comment 2:

### Appeal Information

Appeal Date:	Appeal Case Number:	Appeal Court:
Appeal Status:	Orgin Of Appeal:	
Appeal To:	Appeal To Desc:	LowerCourt Appeal Date:
Disposition Date Of Appeal:	Disposition Type Of Appeal:	

### Administrative Information

Transfer to Admin Doc Date:	Transfer Reason:	Transfer Desc:
Number of Subponeas:	Last Update: 12/14/2021	Updated By: AJA

## Parties

### Party 1 - Plaintiff BUSINESS - ONIN STAFFING, LLC

#### Party Information

Party:	C001-Plaintiff	Name:	ONIN STAFFING, LLC	Type:	B-BUSINESS
Index:	D PHILADELPHIA	Alt Name:		Hardship:	No
Address 1:	3800 COLONNADE PARKWAY			JID:	BBG
				Phone:	(205) 872-1032

Address 2: SUITE 300 Case 2:22-cv-00071-AMM Document 1-1 Filed 01/19/22 Page 3 of 25  
City: BIRMINGHAM State: AL Zip: 35243-0000 Country: US  
SSN: XXX-XX-X999 DOB:

#### Court Action

Court Action:  
Amount of Judgement: \$0.00 Court Action For:  
Cost Against Party: \$0.00 Other Cost: \$0.00  
Comment:  
Warrant Action Date: Warrant Action Status:  
Court Action Date:  
Exemptions:  
Date Satisfied:  
Arrest Date:  
Status Description:

#### Service Information

Issued: Issued Type: Reissue: Reissue Type:  
Return: Return Type: Return: Return Type:  
Served: Service Type Service On: Served By:  
Answer: Answer Type: Notice of No Service: Notice of No Answer:

#### Attorneys

Number	Attorney Code	Type of Counsel	Name	Email	Phone
Attorney 1	TAY046		TAYLOR SPENCER MCCARTNEY	STAYLOR@BTNLAW.COM	(205) 872-1032

### Party 2 - Defendant BUSINESS - PHILADELPHIA INDEMNITY INSURANCE COMPANY

#### Party Information

Party: D001-Defendant Name: PHILADELPHIA INDEMNITY INSURANCE COMPANY Type: B-BUSINESS  
Index: C ONIN STAFFIN Alt Name: Hardship: No JID: BBG  
Address 1: C/O CT CORPORATION SYSTEM Phone: (205) 000-0000  
Address 2: 2 N JACKSON S., STE. 605  
City: MONTGOMERY State: AL Zip: 36104-0000 Country: US  
SSN: XXX-XX-X999 DOB: Sex: Race:

#### Court Action

Court Action:  
Amount of Judgement: \$0.00 Court Action For:  
Cost Against Party: \$0.00 Other Cost: \$0.00  
Comment:  
Warrant Action Date: Warrant Action Status:  
Court Action Date:  
Exemptions:  
Date Satisfied:  
Arrest Date:  
Status Description:

#### Service Information

Issued: 12/14/2021 Issued Type: F-CERTIFIED MAIL BY FIL Reissue: Reissue Type:  
Return: Return Type: Return: Return Type:  
Served: 12/20/2021 Service Type C-CERTIFIED MAIL Service On: Served By:  
Answer: Answer Type: Notice of No Service: Notice of No Answer:

Number	Attorney Code	Type of Counsel	Name	Email	Phone
Attorney 1	000000		PRO SE		

**Financial****Fee Sheet**

Fee Status	Admin Fee	Fee Code	Payor	Payee	Amount Due	Amount Paid	Balance	Amount Hold	Garnish Party
ACTIVE	N	CONV	C001	000	\$0.00	\$18.09	\$0.00	\$0.00	0
ACTIVE	N	CV05	C001	000	\$306.00	\$306.00	\$0.00	\$0.00	0
ACTIVE	N	JDMD	C001	000	\$100.00	\$100.00	\$0.00	\$0.00	0
ACTIVE	N	VADM	C001	000	\$45.00	\$45.00	\$0.00	\$0.00	0
<b>Total:</b>					\$451.00	\$469.09	-\$18.09	\$0.00	

**Financial History**

Transaction Date	Description	Disbursement Account	Transaction Batch	Receipt Number	Amount	From Party	To Party	Money Type	Admin Fee	Reason	Attorney	Operator
12/16/2021	CREDIT	CONV	2022054	2083530	\$18.09	C001	000		N		PAS	
12/16/2021	RECEIPT	CV05	2022054	2083540	\$306.00	C001	000		N		PAS	
12/16/2021	RECEIPT	JDMD	2022054	2083550	\$100.00	C001	000		N		PAS	
12/16/2021	RECEIPT	VADM	2022054	2083560	\$45.00	C001	000		N		PAS	

**Case Action Summary**

Date:	Time	Code	Comments	Operator
12/14/2021	4:20 PM	ECOMP	COMPLAINT E-FILED.	TAY046
12/14/2021	4:20 PM	FILE	FILED THIS DATE: 12/14/2021 (AV01)	AJA
12/14/2021	4:21 PM	EORD	E-ORDER FLAG SET TO "Y" (AV01)	AJA
12/14/2021	4:21 PM	ASSJ	ASSIGNED TO JUDGE: BRENDETTE BROWN GREEN (AV01)	AJA
12/14/2021	4:21 PM	STAT	CASE ASSIGNED STATUS OF: ACTIVE (AV01)	AJA
12/14/2021	4:21 PM	TDMJ	JURY TRIAL REQUESTED (AV01)	AJA
12/14/2021	4:21 PM	SCAN	CASE SCANNED STATUS SET TO: N (AV01)	AJA
12/14/2021	4:21 PM	ORIG	ORIGIN: INITIAL FILING (AV01)	AJA
12/14/2021	4:21 PM	C001	C001 PARTY ADDED: ONIN STAFFING, LLC (AV02)	AJA
12/14/2021	4:21 PM	C001	LISTED AS ATTORNEY FOR C001: TAYLOR SPENCER MCCAR	AJA
12/14/2021	4:21 PM	C001	INDIGENT FLAG SET TO: N (AV02)	AJA
12/14/2021	4:21 PM	C001	C001 E-ORDER FLAG SET TO "Y" (AV02)	AJA
12/14/2021	4:21 PM	D001	INDIGENT FLAG SET TO: N (AV02)	AJA
12/14/2021	4:21 PM	D001	D001 PARTY ADDED: PHILADELPHIA INDEMNITY INSURANCE	AJA
12/14/2021	4:21 PM	D001	D001 E-ORDER FLAG SET TO "Y" (AV02)	AJA
12/14/2021	4:21 PM	D001	CERT MAIL-FIL ISSUED: 12/14/2021 TO D001 (AV02)	AJA
12/14/2021	4:21 PM	D001	LISTED AS ATTORNEY FOR D001: PRO SE (AV02)	AJA
12/29/2021	8:35 AM	D001	SERVICE OF CERTIFIED MAI ON 12/20/2021 FOR D001	KAD
12/29/2021	8:35 AM	ESERC	SERVICE RETURN	KAD

**Images**

Date:	Doc#	Title	Description	Pages
12/14/2021 4:20:29 PM	1	CIVIL_COVER_SHEET	CIRCUIT COURT - CIVIL CASE	1

12/14/2021 4:21:35 PM 3 COMPLAINT - TRANSMITTAL E-NOTICE TRANSMITTALS

2

12/14/2021 4:21:36 PM 4 COMPLAINT - SUMMONS E-NOTICE TRANSMITTALS

1

12/29/2021 8:35:25 AM 5 SERVICE RETURN SERVICE RETURN

2

12/29/2021 8:35:37 AM 6 SERVICE RETURN - TRANSMITTAL E-NOTICE TRANSMITTALS

1

**END OF THE REPORT**



Date of Filing: 12/14/2021 Judge Code:

State of Alabama  
Unified Judicial System  
Form AR Civ-93 Rev. 9/18

**COVER SHEET**  
**CIRCUIT COURT - CIVIL CASE**  
(Not For Domestic Relations Cases)

Ca: 01 Date of Filing: 12/14/2021 Judge Code:

**GENERAL INFORMATION**

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

**ONIN STAFFING, LLC v. PHILADELPHIA INDEMNITY INSURANCE COMPANY**

**First Plaintiff:**  Business  Individual  
 Government  Other

**First Defendant:**  Business  Individual  
 Government  Other

**NATURE OF SUIT:** Select primary cause of action, by checking box (check only one) that best characterizes your action:

**TORTS: PERSONAL INJURY**

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonness
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: \_\_\_\_\_

**TORTS: PERSONAL INJURY**

- TOPE - Personal Property
- TORE - Real Properly

**OTHER CIVIL FILINGS**

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Service

**OTHER CIVIL FILINGS (cont'd)**

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP - Contempt of Court
- CONT - Contract/Ejectment/Writ of Seizure
- TOCN - Conversion
- EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division
- CVUD - Eviction Appeal/Unlawful Detainer
- FORJ - Foreign Judgment
- FORF - Fruits of Crime Forfeiture
- MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB - Protection From Abuse
- EPFA - Elder Protection From Abuse
- QTLB - Quiet Title Land Bank
- FELA - Railroad/Seaman (FELA)
- RPRO - Real Property
- WTEG - Will/Trust/Estate/Guardianship/Conservatorship
- COMP - Workers' Compensation
- CVXX - Miscellaneous Circuit Civil Case

**ORIGIN:**  F  INITIAL FILING

**A**  **APPEAL FROM DISTRICT COURT**

**O**  **OTHER**

**R**  **REMANDED**

**T**  **TRANSFERRED FROM OTHER CIRCUIT COURT**

**HAS JURY TRIAL BEEN DEMANDED?**  YES  NO

**Note:** Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)

**RELIEF REQUESTED:**  MONETARY AWARD REQUESTED  NO MONETARY AWARD REQUESTED

**ATTORNEY CODE:**

TAY046

12/14/2021 4:20:21 PM

/s/ SPENCER MCCARTNEY TAYLO

Date

Signature of Attorney/Party filing this form

**MEDIATION REQUESTED:**  YES  NO  UNDECIDED

**Election to Proceed under the Alabama Rules for Expedited Civil Actions:**

YES  NO



## IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ONIN STAFFING, LLC, )  
Plaintiff, )  
v. )  
PHILADELPHIA INDEMNITY )  
INSURANCE COMPANY, )  
Defendant. )

CASE NO.:

**COMPLAINT**

Plaintiff Onin Staffing, LLC (“Onin” or “Onin Staffing”) states the following Complaint against Defendant Philadelphia Indemnity Insurance Company (“PIIC”):

**NATURE OF THE ACTION**

1. This action arises out of PIIC’s wrongful denial of employment liability insurance coverage to its named insured, Onin Staffing, with respect to a putative class action lawsuit filed by Bobby Lee Miles, Jr. (“Miles”) in the United States District Court for the Middle District of Tennessee (the “Miles Lawsuit”).<sup>1</sup> In the Miles Lawsuit, Miles claims Onin terminated his employment and denied him a subsequent employment opportunity in violation of the Fair Credit Reporting Act of 1970, as amended (“FCRA”), 15 U.S.C. § 1681 et. seq. Miles alleges Onin unlawfully used an employee background check obtained from a credit reporting agency for these employment purposes. In addition to his individual claims, Miles seeks to represent an “Adverse Action Class,” consisting of other job applicants and employees Plaintiff claims were subjected to an adverse employment action as a result of Onin’s obtaining and using a consumer report for its

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<sup>1</sup> *Bobby Lee Miles, Jr., et al. v. Onin Staffing, LLC*, Civil Action No. 3:21-cv-0275, in the United States District Court for the Middle District of Tennessee, Nashville Division.

employment purposes. Notwithstanding that PIIC's Employment Practices Liability policy covers Onin for claims alleging wrongful termination of employment, failure to employ, employment related invasion of privacy, and wrongful deprivation of a career opportunity among its twenty-four (24) enumerated subparts to the definition of "**Employment Practice Act**," PIIC inexplicably has denied coverage to Onin on the basis this definition is not met. Indeed, PIIC takes this wrongful coverage position while simultaneously maintaining the Miles Lawsuit is excluded from its professional liability coverage by an employment related practices exclusion. As further set forth in this Complaint, these and other coverage positions taken by PIIC find no lawful basis under the policy or Alabama law. PIIC's wrongful coverage denial is a breach of contract and an act of bad faith.

#### **PARTIES AND JURISDICTION**

2. Plaintiff Onin Staffing is a limited liability company with its principal place of business in Jefferson County, Alabama.

3. Defendant PIIC is an insurance company doing business in Jefferson County, Alabama.

4. The claims asserted in this action arise out of an insurance policy that PIIC issued to Onin Staffing at its Birmingham, Alabama address.

5. Venue is proper in this Court pursuant to applicable Alabama law, including Alabama Code § 6-3-7.

#### **BACKGROUND**

##### ***The Miles Lawsuit***

6. Onin Staffing is an employment staffing company that supplies workers to other businesses.

7. On April 5, 2021, Miles filed the Miles Lawsuit against Onin claiming he was denied employment opportunities by Onin in violation of FCRA. The claims in the Miles Lawsuit are set forth in an Amended Class Action Complaint and Demand for Jury Trial filed on May 26, 2021. All references to the claims and allegations in the Miles Lawsuit in this Complaint are as alleged in Miles' Amended Class Action Complaint.<sup>2</sup>

8. The Miles Lawsuit claims Onin uses an outside consumer reporting agency to conduct background checks on existing employees from time-to-time during the course of their employment. Based on these reports, Miles alleges Onin took two adverse employment actions against him.

9. First, Miles claims in July 2020, he applied for employment with Onin and "was offered employment, accepted the job and was assigned to a Dorman warehouse facility." Miles alleges he was informed in October 2020 he was not eligible for continued assignment or employment at Dorman because he failed a background check. Miles claims Onin failed to provide him with pre-adverse action notice or a copy of his report before terminating his assignment at Dorman.

10. Subsequently, Miles claims Onin obtained a background report to determine Miles' eligibility for another assignment. Miles claims he did not receive the assignment and was thus subjected to a "second adverse employment action" without Onin providing him notice or a copy of the report "before taking adverse employment action against him."

11. Miles claims these adverse employment actions violated his rights under FCRA. He asserts Onin had no right to take adverse employment action against him

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<sup>2</sup> By referring to the Miles Lawsuit allegations in this Complaint, Onin in no way is admitting the allegations or suggesting or implying they have merit.

without providing him notice of the report. Among other things, the Miles Lawsuit claims FCRA makes it presumptively unlawful to obtain and use a consumer report for an employment purpose, and that Onin violated the act by denying him employment opportunities, terminating his existing position with Dorman, and depriving him of a subsequent assignment based on use of, and the failure to provide him with notice of, the report.

12. In addition to his individual claims, Miles seeks to represent an “Adverse Action Class” consisting of the following:

All applicants and employees in the United States who were subject to an adverse employment action based in whole or in part on their consumer report but to whom Onin Staffing did not first provide notice and a copy of the report before taking the adverse employment action, for the five years preceding the date of this action through the date of final judgment.

Miles claims Onin regularly obtains and uses consumer reports to conduct background checks on prospective employees and existing employees, and acted in deliberate or reckless disregard of his rights and those of the “Adverse Action Class.” Miles claims Onin violated FCRA and his federal rights, including his alleged statutory rights and promulgations of the Federal Trade Commission. As a result, Miles claims he was denied the opportunity to plead his case for continued employment, to understand how the consumer report might affect his future efforts to obtain employment, and to see how his personal, sensitive information was being reported or if the information was even correct. The Miles Lawsuit seeks statutory damages as provided by FCRA, punitive damages, and attorney’s fees, among other relief.

***Onin's Purchase of EPL Coverage from PIIC***

13. To protect itself against the risk of claims and lawsuits arising from its employee staffing business, Onin purchased from PIIC numerous insurance policies. At issue here is Onin's Private Company Protection Plus Policy No. PHSD1571321 ("Private Company Policy"), which provides Employment Practices Liability Coverage to Onin for the policy period September 15, 2020 to September 15, 2021 (the "EPL Coverage" or the "EPL Policy"). Onin purchased its EPL Coverage from PIIC to protect Onin against claims related to employment practices, including, but not limited to, claims alleging adverse employment action. Onin also purchased, among its other policies, a Staffing Service Professional Liability Coverage (the "PL Coverage" or "PL Policy") providing professional liability coverage and a Commercial Lines Policy providing commercial general liability insurance coverage (the "CGL Coverage").

14. Onin's EPL Policy includes the following Insuring Agreement:

I. Insurance Agreement

The **Underwriter** [PIIC] shall pay on behalf of the **Insured** [Onin], **Loss** from **Claims** against the **Insured** [Onin] during the **Policy Period** (or, if applicable, the Extended Reporting Period), and reported to the **Underwriter** [PIIC] pursuant to the terms of this Policy, for an **Employment Practice Act**.<sup>3</sup>

15. The EPL Policy's general coverage form defines "**Employment Practice Act**" to cover seventeen (17) enumerated employment related acts or omissions. However, Onin purchased a Private Company Enhancement Endorsement (PI-PRD-126 (04/19)) from PIIC that expands the EPL Coverage to include twenty-four enumerated acts or

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<sup>3</sup> The EPL Policy highlights in bold terms that are specifically defined in the policy.

omissions. The endorsement also expands some of the other enumerated employment acts.

As modified, the term “**Employment Practice Act**” is defined as follows:

**Employment Practice Act** means any actual or alleged:

1. wrongful dismissal, discharge or termination of employment;
2. breach of a written or oral employment contract or implied employment contract;
3. employment related misrepresentation;
4. wrongful failure to promote;
5. violation of employment discrimination laws (including harassment);
6. wrongful deprivation of a career opportunity;
7. employment related wrongful discipline;
8. negligent employee evaluation, training or supervision;
9. employment related invasion of privacy;
10. employment related defamation (including libel and slander);
11. workplace harassment of any kind, including sexual;
12. hostile work environment;
13. constructive discharge of employment;
14. employment related Retaliation;
15. employment related humiliation;
16. wrongful demotion;
17. negligent reassignment;
18. negligent hiring or retention;
19. failure to grant tenure;
20. failure to provide or enforce consistent employment policies and procedures;
21. failure to employ;
22. workplace bullying;
23. violation of any federal, state or local civil rights laws; and
24. acts described in 1. through 23. above arising from the use of the **Private Company**’s internet, e-mail, telecommunication or similar systems, including communications on social media networks and committed or attempted by an **Individual Insured** in his/her capacity as an **Individual Insured** or by the **Private Company**.

Solely with respect to any **Claim** brought by or on behalf of any **Third Party**, **Employment Practice Act** means any

actual or alleged wrongful failure to employ, discrimination, harassment or violation of such **Third Party's** civil rights in relation to such failure to employ, discrimination or harassment, whether direct, indirect, or unintentional, committed by an **Individual Insured** in his/her capacity as an **Individual Insured** or by the **Private Company**.

16. The EPL Policy defines "**Third Party**" to mean "any natural person who is not an **Employee of the Private Company**." Thus, the EPL Policy protects Onin against claims by both employees and third-party non-employees.

17. In addition, the EPL Policy expressly covers Onin for claims alleging intentional acts or omissions, as is the very nature of such an insurance policy. For example, the EPL Policy insures Onin for allegations of wrongful termination, slander, libel, workplace bullying, and sexual harassment, among other things.

18. The EPL Policy also insures Onin's costs of defending lawsuits alleging an "**Employment Practice Act**," including its reasonable and necessary legal fees and expenses, and requires PIIC to advance Onin's defense costs prior to final disposition of a claim. In other words, PIIC is obligated to pay Onin's defense costs as they are incurred, before any finding of ultimate liability.

#### ***PIIC's First Denial of Coverage for the Miles Lawsuit***

19. On April 14, 2021, Onin Staffing, through its broker, timely reported the Miles Lawsuit to PIIC pursuant to the terms of its policies, and requested coverage, including payment of its defense costs and indemnity.

20. For five months, PIIC provided no substantive response.

21. PIIC hired a law firm that finally responded on its behalf on September 15, 2021. In its response, Akerman LLP, a law firm located in Atlanta, Georgia, denied coverage on behalf of PIIC under both Onin's EPL Policy and its PL Policy.

Notwithstanding the Miles Lawsuit’s allegations triggering the EPL Coverage and PIIC’s obligation to pay Onin’s costs of defense, PIIC denied coverage and failed to conduct any meaningful investigation into the claims before issuing the denial.

22. With respect to Onin’s EPL Coverage, PIIC acknowledged the Miles Lawsuit satisfied the EPL Policy’s requirements of a “**Claim**” made against the Insured that was properly reported during the “**Policy Period**.<sup>1</sup>” PIIC further acknowledged Onin satisfied the EPL Policy’s notice requirements, and confirmed the Miles Lawsuit’s claims for actual or statutory damages under FCRA constituted “**Loss**” as defined under the EPL Policy. Despite these coverage findings, PIIC denied coverage on three bases that are wholly devoid of merit. First, PIIC inexplicably denied coverage based on its assertion the Miles Lawsuit does not allege an “**Employment Practice Act**.<sup>2</sup>” As is clear from the definition itself, at least seven of the definition’s enumerated subparts are met. Next, PIIC denied coverage on the basis of “Alabama public policy,” finding the EPL Policy would not cover “willful” violations of FCRA. In doing so, PIIC ignored the Miles Lawsuit’s allegations of reckless conduct and numerous Alabama decisions finding claims of recklessness to be covered under liability insurance policies. Further, PIIC ignored that the EPL Policy’s definition of “**Employment Practice Act**” itself includes numerous examples of intentional acts or omissions recognized to be insurable under Alabama law. Finally, PIIC denied coverage based on an exclusion in the common form of the Private Company Policy, Exclusion B, which applies to Loss “arising out of, based upon or attributable to any dishonest or fraudulent act or omission of any criminal act or omission by such Insured; . . . .” The Miles Lawsuit makes no such allegation, and even if it did, the same exclusion includes the limitation that it “shall only apply if a final and non-appealable

judgment or adjudication in the underlying action establishes the Insured committed such act or omission.” There has been no judgment or adjudication in the Miles Lawsuit at all, much less one finding dishonest, fraudulent, or criminal conduct by Onin when none is alleged.

23. With respect to the PL Coverage, PIIC denied coverage on the basis of three exclusions in the PL Policy, including an exclusion for any actual or alleged violation of FCRA; an exclusion for “damages” arising out of any “wrongful act” committed with knowledge that it was a “wrongful act;” and on the basis of an employment related practices exclusion. No FCRA exclusion is found in the EPL Policy—indeed, none of the PL Policy exclusions relied upon by PIIC are found in the EPL Policy. Further, despite its denial of EPL Coverage on the basis that the Miles Lawsuit failed to allege an **“Employment Practice Act,”** PIIC denied coverage under the PL Policy based on an Employment Related Practices exclusion, finding the Miles’ claims arose from “employment-related practices, policies, acts or omissions” that are precluded from the PL Policy’s coverage.

#### ***PIIC’s Refuses to Reconsider its Wrongful Denial***

24. On November 4, 2021, Onin’s broker wrote to the Akerman law firm, requesting that PIIC reconsider its wrongful coverage denial and provide the defense and indemnity coverage owed under the EPL Policy. In its letter requesting reconsideration, Onin’s broker alerted PIIC the federal court in the Miles Lawsuit had ordered mediation to occur on or before December 22, 2021, and requested reimbursement of Onin’s defense costs incurred through the time of the letter and its advancement of defense costs going forward. Further, Onin’s broker identified numerous allegations in the Lawsuit that satisfied different components of the Policy’s definition of **“Employment Practices Act.”**

Among them, Onin’s broker pointed PIIC to Miles’ allegations that he was denied employment opportunities, that he was terminated and denied a subsequent employment opportunity, and that he was subjected to multiple adverse employment actions based on the use of a consumer report containing “personal, sensitive information.” These allegations satisfy the definition’s subparts for actual or alleged wrongful dismissal, discharge or termination of employment (subpart 1), violation of employment discrimination law (subpart 5), wrongful deprivation of a career opportunity (subpart 5); employment related invasion of privacy (subpart 9), constructive discharge of employment (subpart 13), failure to employ (subpart 21), violation of any federal, state or local civil rights laws (subpart 23), and possibly others. Onin’s broker also explained Alabama public policy does not prohibit enforcement of the EPL Policy’s coverage for intentional acts, and that such a position rendered the EPL Coverage illusory. Finally, Onin’s broker also referred PIIC to the reckless component of the Miles Lawsuit’s FCRA claims, and the numerous reasons why the EPL Policy’s dishonesty, fraud, and criminal acts Exclusion B did not apply.<sup>4</sup>

25. On November 19, 2021, the Akerman law firm, on behalf of PIIC, refused to reconsider its position, once again denying coverage on behalf of PIIC.

***PIIC Ignores Actual Evidence from the Miles Lawsuit Demonstrating Coverage***

26. In addition to PIIC’s failure to cover Onin’s defense costs based on the allegations of the Miles Lawsuit, PIIC likewise has ignored Miles’ responses to discovery

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<sup>4</sup> Onin’s broker also noted the limitation of the EPL Policy’s Exclusion B, which demonstrates the EPL Policy’s intent that the mere allegation of “deliberate dishonest” or fraudulent acts not remove PIIC’s obligation to reimburse and advance Onin’s costs of defending against such claims.

in the Miles Lawsuit that demonstrate Miles' claims and allegations allege a covered "Employment Wrongful Act" and covered reckless conduct under FCRA.

27. After its coverage denials, Onin provided Akerman with Miles' responses to requests for admissions served in the Miles Lawsuit. In his responses, Miles admitted that he claims Onin terminated his employment; wrongfully dismissed him from employment; wrongfully denied him of a career opportunity with Dorman Products; denied his federal rights in subjecting him to adverse employment action; and recklessly violated the FCRA in subjecting him to adverse employment action. Miles also admitted that he claims actual monetary damages as a result of his alleged wrongful termination of employment.

28. Despite Onin's third request that PIIC reconsider its coverage denial based on Miles' admissions, PIIC has failed to acknowledge coverage or to reconsider its wrongful denial.

#### **COUNT I: BREACH OF CONTRACT**

29. Onin Staffing adopts and incorporates the allegations contained in the preceding paragraphs as if realleged in full herein.

30. Defendant PIIC owed a contractual obligation to Onin to reimburse and advance its defense costs and to indemnify it against damages or settlements under the EPL Policy.

31. Onin has fulfilled its obligations under the EPL Policy.

32. Coverage is owed under the EPL Policy and no exclusion applies.

33. PIIC's denial of coverage, and its failure to conduct a reasonable investigation into Miles' claims, constitute a breach of contract.

34. As a result of PIIC's breach, Onin is incurring and continues to incur defense costs that have not been reimbursed. Further, Onin's ongoing defense costs are not being advanced by PIIC as required under the EPL Policy.

35. Onin has been damaged and continues to be damaged as a result of the PIIC's breach of contract.

WHEREFORE, the premises considered, Plaintiff Onin seeks any and all damages to which it may be entitled, including, but not limited to, compensatory damages, attorney's fees, interest, and costs.

#### **COUNT II: BAD FAITH**

36. Onin Staffing adopts and incorporates the allegations contained in the preceding paragraphs as if realleged in full herein.

37. Defendant PIIC owes Onin an obligation to provide coverage under the EPL Policy for its loss related to the Miles Lawsuit, including its defense costs and any damages or settlements in the Miles Lawsuit.

38. Defendant PIIC denied coverage to Onin without any reasonable or lawful basis, and its denial is based on provisions that do not exist in the EPL Policy or positions that expressly contradict the provisions in the EPL Policy.

39. Defendant PIIC's denial of coverage was done knowingly and recklessly without regard to the facts or allegations.

40. Defendant PIIC intentionally failed to determine whether there was an arguable reason to deny coverage of Onin's claim.

41. Defendant PIIC has acted in bad faith.

WHEREFORE, the premises considered, Plaintiff Onin seeks any and all damages to which it may be entitled, including, but not limited to, compensatory and punitive damages, attorney's fees, interest, and costs.

**PLAINTIFF ONIN STAFFING REQUESTS A TRIAL BY JURY  
AS TO ALL ISSUES**

Respectfully submitted, this the 14<sup>th</sup> day of December, 2021.

*Spencer M. Taylor*

One of the Attorneys for Plaintiff Onin Staffing, LLC

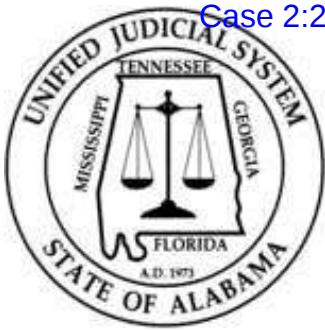
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**OF COUNSEL:**

Spencer M. Taylor (TAY046)  
Barze Taylor Noles Lowther LLC  
2204 Lakeshore Drive, Suite 425  
Birmingham, Alabama 35209  
205-872-1032  
[staylor@btnllaw.com](mailto:staylor@btnllaw.com)

**PLEASE SERVE DEFENDANT BY CERTIFIED MAIL AS FOLLOWS:**

Philadelphia Indemnity Insurance Company  
c/o CT Corporation System  
2 North Jackson Street  
Suite 605  
Montgomery, Alabama 36104



AlaFile E-Notice

01-CV-2021-903644.00

To: SPENCER MCCARTNEY TAYLOR  
staylor@btndl.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

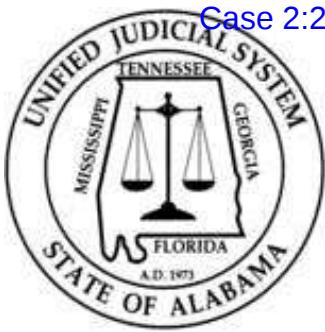
ONIN STAFFING, LLC V. PHILADELPHIA INDEMNITY INSURANCE COMPANY  
01-CV-2021-903644.00

The following complaint was FILED on 12/14/2021 4:20:29 PM

Notice Date: 12/14/2021 4:20:29 PM

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BIRMINGHAM, AL, 35203

205-325-5355  
jackie.smith@alacourt.gov



AlaFile E-Notice

01-CV-2021-903644.00

To: PHILADELPHIA INDEMNITY INSURANCE COMPANY  
C/O CT CORPORATION SYSTEM  
2 N JACKSON S., STE. 605  
MONTGOMERY, AL, 36104

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ONIN STAFFING, LLC V. PHILADELPHIA INDEMNITY INSURANCE COMPANY  
01-CV-2021-903644.00

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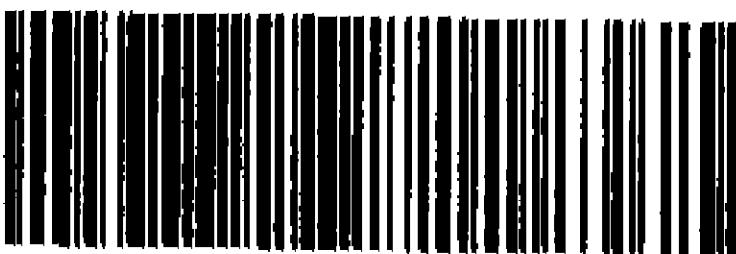
State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	<b>SUMMONS</b> <b>- CIVIL -</b>	<b>Court Case Number</b> 01-CV-2021-903644.00
<b>IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA</b> <b>ONIN STAFFING, LLC V. PHILADELPHIA INDEMNITY INSURANCE COMPANY</b>		
<b>NOTICE TO:</b> <u>PHILADELPHIA INDEMNITY INSURANCE COMPANY, C/O CT CORPORATION SYSTEM 2 N JACKSON S., STE. 605, MONTGOMERY, AL 36104</u> <small>(Name and Address of Defendant)</small>		
<p>THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S), SPENCER MCCARTNEY TAYLOR</p> <hr/> <p style="text-align: right;">[Name(s) of Attorney(s)]</p> <p>WHOSE ADDRESS(ES) IS/ARE: <u>2204 LAKESHORE DRIVE, SUITE 425, BIRMINGHAM, AL 35209</u></p> <hr/> <p style="text-align: right;">[Address(es) of Plaintiff(s) or Attorney(s)]</p> <p>THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.</p>		
<b>TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:</b>		
<p><input type="checkbox"/> You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.</p> <p><input checked="" type="checkbox"/> Service by certified mail of this Summons is initiated upon the written request of <u>ONIN STAFFING, LLC</u> pursuant to the Alabama Rules of the Civil Procedure.</p>		
<u>12/14/2021</u> <small>(Date)</small>	<u>/s/ JACQUELINE ANDERSON SMITH</u> <small>(Signature of Clerk)</small>	By: _____ <small>(Name)</small>
<p><input checked="" type="checkbox"/> Certified Mail is hereby requested.</p>		
<p><b>RETURN ON SERVICE</b></p> <p><input type="checkbox"/> Return receipt of certified mail received in this office on _____  <small>(Date)</small></p> <p><input type="checkbox"/> I certify that I personally delivered a copy of this Summons and Complaint or other document to _____  <small>(Name of Person Served)</small> in _____  <small>(Name of County)</small> County,  <small>(Address of Server)</small></p> <p>Alabama on _____  <small>(Date)</small>  <small>(Type of Process Server)</small> _____ <u>(Server's Signature)</u> _____  <small>(Server's Printed Name)</small> _____ <u>(Phone Number of Server)</u> _____</p>		

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**1. Article Addressed to:**

Philadelphia Indemnity Insurance Company  
c/o CT Corporation System  
2 N Jackson St Suite 605  
Montgomery AL 36104-3821

~~0400 0116 0000 0528 2863 67~~**2. Article Number (Transfer from service label)**~~9414 7116 0000 0528 2863 56~~**A. Signature: (□ Acknowledgment □ Receipt)****X**   **B. Received By: (Printed Name)****C. Date of Delivery****DEC 20 2021****D. Is delivery address different from Item 1?****If YES, enter delivery address below:** Yes No**3. Service Type** Certified Mail

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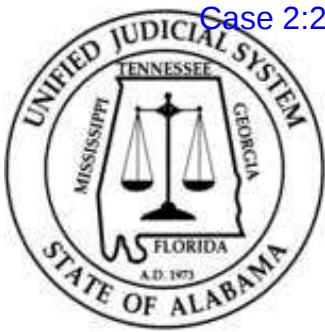
DEC 28

2021

JACQUELINE ANDERSON CLARK  
SMITH

Jacqueline Anderson Smith  
Circuit Court Clerk  
Jefferson County, Alabama  
716 N. Richard Arrington Blvd.  
Birmingham, AL 35203

CV-2021-903644



AlaFile E-Notice

01-CV-2021-903644.00

Judge: BRENDETTE BROWN GREEN

To: TAYLOR SPENCER MCCARTNEY  
staylor@btndl.com

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## NOTICE OF SERVICE

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ONIN STAFFING, LLC V. PHILADELPHIA INDEMNITY INSURANCE COMPANY  
01-CV-2021-903644.00

The following matter was served on 12/20/2021

**D001 PHILADELPHIA INDEMNITY INSURANCE COMPANY**  
**Corresponding To**  
**CERTIFIED MAIL**

JACQUELINE ANDERSON SMITH  
CIRCUIT COURT CLERK  
JEFFERSON COUNTY, ALABAMA  
JEFFERSON COUNTY, ALABAMA  
716 N. RICHARD ARRINGTON BLVD.  
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